

Aging Division

Wyoming Department of Health

Information and Education Bulletin

Subject: Older Americans Act Frequently Asked Questions, Title III and Title VII

Wyoming is unique in that it serves as both the State Unit on Aging and the Area Agency on Aging and has done so since 1991. For these frequently asked questions, as answered by the Administration on Aging, SUA and AAA both refer to the Aging Division of the Wyoming Department of Health.

Definitions

AoA – Administration on Aging

OAA – Older Americans Act

SUA – State Unit on Aging

AAA – Area Agency on Aging

1. How can I get my questions answered?

- Read the Older Americans Act (OAA), Title III to find the answer. Contracts with the Aging Division indicate that the contractor is required to provide services in compliance with state and federal laws, and all applicable policies, rules and regulations.
- It is the responsibility of the State Unit on Aging (SUA) to delineate State policy to implement the OAA and its regulations. Some questions and answers are a matter of State policy and best practice, not the OAA or its regulations. The SUA has latitude in relation to the appropriate rules, regulations and policies for the state.

2. Does the state need to have a nutrition policy and procedure manual?

- The OAA places responsibility for nutrition program implementation on the SUA. See Title III Part C Subpart 3 - General Provisions
- The current regulations, 45 Code of Federal Regulations 1321, 1329.11 State agency policies, (a) state: "The state agency on aging shall develop policies governing all aspects of programs operated under this part...The State agency is responsible for enforcement of these policies."

3. Is the nutrition program required to provide services in an adult day care?

- OAA Section 331 states: “The Assistant Secretary shall carry out a program for making grants to States under State plans approved under section 307 for the establishment and operation of nutrition projects...(2) which shall be provided in congregate settings, *including adult day care facilities and multigenerational meal sites...*
- This language gives examples of the kinds of congregate nutrition settings and indicates that it is permissible or allowable to provide services in these locations. The language does not indicate that it is required to provide services in adult day care.

4. Who may participate in the OAA Nutrition Program?

Section 339 (2)(H),(I) provide for the following:

- A person aged 60 years of age and older;
- A spouse of any age;
- Disabled individuals, who reside in housing facilities for the elderly where a congregate site exists, are eligible for congregate meals.
- AAAs may establish procedures to allow a nutrition project to offer a meal to an individual who provides volunteer service during meal hours.
- AAAs may establish procedures to allow a nutrition project to offer a meal to a disabled individual who resides at home with an older adult (both congregate and home delivered meals).

5. Are family caregivers eligible for home delivered meals (HDMs)?

- Yes, if the family caregiver is 60+ or the spouse of an eligible client [Section 339 (2)(I)], the family caregiver may receive HDMs under Title III C-2.
- If the family caregiver is not eligible to receive HDMs through Title III C-2, HDMs may be provided to the family caregiver through Title III Part E Section 373(b)(5).
- Part E Section 373(b)(5) lists “supplemental services, on a limited basis, to complement the care provided by caregivers.” These supplemental services may include HDMs.

6. Who may not participate in the OAA Nutrition Program?

- Homebound disabled individuals living alone who have not attained the age of sixty may not participate in the Part C-2 program (home-delivered meals).
- Spouses (under the age of 60) of non-Title III-C participating individuals may not receive eligible meals. Eligibility for the under-60 spouse is based on the age 60+ spouse’s participation in the nutrition program.
- Guests of eligible participants may receive a meal for the full cost of the meal provided all participants have received the service. These meals are not counted as eligible meals to be included on the state’s Stat Program Report (SPR). Guests should receive meals only upon availability.
- Guests include children, staff and any non-participating person. The full cost of the meal must be charged because Title III-C funds are not intended for these populations.

7. If an older individual is accompanied by a younger person who is seeking Title III-C nutrition services under the spousal eligibility provision of Section 339 (2)(I) and the two individuals self-identify as “husband” and “wife” for the purposes of meeting the Federal definition, what provisions exist within the Act authorizing the State Agency to inquire further about age, marital status and gender of such persons?

- There are no such explicit provisions in the OAA. If persons indicate they are married and one is age 60 that is considered a self-declaration. The OAA does state that services are provided to spouses and not partners.

8. What are the eligibility criteria for meals to be served in OAA Nutrition Programs?

Section 339 (2)(A)(I)(II) provides the following:

- Meals must comply with the most recent Dietary Guidelines for Americans. Guidelines developed for other programs are not referenced in the OAA.
- Meals must provide at least 1/3rd of the Dietary Reference Intakes (DRIs).
- Meals must be served in compliance with State and local laws regarding the safe and sanitary handling of food, equipment, and supplies used in the storage, preparation, service and delivery of meals to an older individual.

Section 315(b) (3) Means Testing

- Meals served to means-tested individuals in means-tested programs are not Title III C eligible meals. Meals served to individuals in nursing homes, adult care homes or assisted living facilities where the meal is a part of the per diem rate are not eligible.

9. Can meals served to recipients of Medicaid waiver meals who are 60 years or over, or disabled under 60 years be reported as eligible Title III-C meals?

- No. In order to participate in the Medicaid program, clients are evaluated for income status and services are provided accordingly. Means-tested services are not allowable in OAA programs.
A meal may be provided through the Medicaid waiver program. Usually a negotiated per diem rate is contractually entered into with the State Medicaid agency and the Title III-C provider. The rate should cover the full cost of the meal. These meals are not reported to AoA for the Nutrition Services Incentive Program (NSIP) meal count.

10. How are contributions to be used?

- Section 315 (b)(4)(E) The Area Agency on Aging (AAA) shall ensure that each service provider will use all collected contributions to expand the service for which the contributions were given and that contributions are to be used to supplement (not supplant) funds received under this Act.
Prior to the 2000 OAA Amendments, providers could use their contributions from

III-C services to improve access to these services and thus they could use their contributions for transportation, outreach, etc. as long as it was for these services in the nutrition program. The 2000 amendments change this section and now contributions can only be used for expansion of the service generating the contribution. Most states that previously relied heavily upon contributions for access services (Title III B services) to nutrition services now have the option to transfer funds from Title III-C to III-B to offset the change.

11. Does AoA have a written response that has been officially released to States, regarding sending "bills" for home delivered meals?

- No, because the OAA does not allow clients to be charged for or pay for any OAA services. Section 315 Voluntary Contributions (b) indicates that voluntary contributions shall be allowed and may be solicited for all services for which funds are received under this Act provided that the method of solicitation is "noncoercive." In addition, contributions are encouraged for individuals whose self-declared income is at or above 185% of the poverty line, at contribution levels based on the actual cost of services.

12. Should we deny meals to potential clients/participants based on citizenship or national origin?

- Non-citizens, regardless of their alien status, should not be banned from services authorized by the OAA and administered by the AoA based solely on their alien status. OAA programs administered by the AoA are not on the list of agencies, published by HHS, that provide "Federal public benefits" as defined in Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA.) Only agencies on this list providing those benefits are required to determine citizenship, etc. For further information please go to www.aoa.gov/professionals/civil_rights.

13. Are participants required to sign in?

- The OAA does not require signatures. How a state chooses to keep track of participation is a state decision. (In Wyoming, we require signatures or some other method that uniquely identifies the client and cannot be easily duplicated. Providers cannot routinely sign in or validate clients. As directed by the AoA, someone has to be able to validate or be able to verify that the actual person had a service.)

14. What is the guidance on waiting lists?

- The OAA doesn't address waiting lists. They are considered acceptable practice for many providers to use to manage the applications for services in an orderly fair manner.

15. Does a Title III meal have to be the noon meal? Can the daily meal be an early evening meal everyday?

- A Title III meal can be served at breakfast, lunch and dinner. The same standards apply.

16. Can a meal be counted as an eligible meal if the client does not eat everything served?

- Meals are eligible based on their nutritional content and not how much is eaten. The meal is eligible if it provides the required nutritional content and meets all other program requirements.

17. If a client asks for a part of a meal after eating a complete meal, can the second helping be considered an eligible meal?

- Second helpings served to the same individual at the same meal service are NOT counted as second meals for reporting purposes.

18. Are “Carry-out”/”Take-Out” meals considered eligible meals?

- Part C Subparts 1 and 2 of the OAA authorize two nutrition services – Congregate Nutrition Services and Home-Delivered Nutrition Services respectively. No provisions are made for carry-out or take-out settings. The OAA states that meals shall be provided in a congregate setting or delivered to the person’s home. Congregate meal service allows clients to receive socialization, information and assistance, and many other education and health-related services, to name a few. The OAA requires that services are to be targeted and persons participating should be in need of these related services and not just the meal.

19. What should SUAs be doing with Title VI?

- SUAs are responsible under Title III to provide services to older Indians and to coordinate with Title VI funded programs. Title III contains numerous references to services to Indians as well as references to Title III/VI coordination.

The following sections of the OAA address Indians and/or Title III/VI coordination:

- Section 102(5),(6),(20)
- Section 201 (c)(A)(I)
- Section 301(a)(2)(C)
- Section 305 (a)(1),(b)(2),(3),(4)
- Section 306(a)(1),(6)(G),(11)(A)(B)(C)
- Section 307(a)(21)(24)
- Section 310 (a)(b)
- Section 614(a)(8)(11).

To comply with the OAA Title III/VI coordination requirements:

- Some States award Title III funds to the Title VI grantees and the program is administered by one state program administrator. This makes coordination more effective because the dollars can be maximized to reach more persons.
- Many States invite tribal organizations to all training that the State is conducting. Some State nutritionists provide technical assistance and training on nutrition related topics.

20. Does the OAA (or AoA) require an SUA to use a menu pattern?

- No, the OAA does not require a specific menu pattern. Patterns are used as planning devices to help follow the dietary guidance. A menu pattern is not a compliance tool. It is a State responsibility to determine the use of meal patterns in menu planning.

21. Could you please clarify the requirement for home delivered meals to provide milk if the client does not drink milk? Is there a recommendation for record-keeping purposes that the client refuses a portion of the meal and then not send the milk?

- There is not a requirement for "milk." Nutritional requirements are for individual nutrients not particular foods. Since milk and milk products are considered best sources of calcium, potassium, phosphorous, vitamin D and other nutrients they are usually placed on the menu daily for that reason. A program may want to substitute orange juice fortified with calcium and vitamin D, fortified soy beverage, or reduced lactose milk for individuals who are lactose intolerant.
- When calculating nutrient content, however, nutrients from all sources should be determined. If clients don't drink milk and refuse it when served, it should not be served. Other good sources of the needed nutrients should be included on the menu to replace those nutrients coming from milk. One of the advantages of using a computer assisted nutrient analysis system is to identify the nutrients from all of the foods served.

22. Is there any expectation that we collect and include in reporting the NSI risk scores for recipients of meals from the "other"/non-contractual funding sources?

- Nutrition screening information must be provided for all persons participating in the OAA nutrition program. If the state submits counts for clients that are served by Title III C providers but whose funding is from another approved source other than OAA funds and match, client information data is required for them also.

23. Do we have to use the NSI checklist for our State Program Report (SPR)?

- There is no requirement that you must use the NSI Form as long as you obtain information to respond to questions on the state's SPR for participants. Some states include the same questions in their overall client assessment and others develop their own tool with questions that correspond to the NSI checklist.

24. Can NSIP money be used to buy frozen meals that meet 1/3 RDA for home delivered meal recipients?

Yes, NSIP funds can be used to purchase frozen meals. NSIP funds can only be used under Section 311(d)(1) for the purchase of United States agricultural commodities and other foods. Since NSIP funds are often pooled with other funds, and the NSIP share of total meals costs are usually minimal, it is unlikely that a meal provider would not adhere to this provision.

25. Can a 60 year old caregiver (family, volunteer, paid or not) receive a home-delivered meal along with the 60+ client receiving HD meals and have it counted as an NSIP HDM which means it would be paid for with T-III C2 funds?

- No, this 60 –year old non-spousal caregiver that has not been determined to be homebound is not eligible to receive a Title III-C meal that would be counted for NSIP. A meal for the caregiver in this instance may be paid with Title III –E funds.

26. Can a congregate meal provider provide an evening or weekend meal at a congregate site to an eligible meal participant who is identified as a high nutritional risk and can that meal be funded by Title III C1 funds? If the meal is funded with local dollars, is the meal eligible for NSIP?

- Section 331 of the OAA authorizes congregate meal provision 5 or more days per week, so weekend meals are authorized. Section 331 also authorizes more than one meal a day so an evening meal is also acceptable. However these meals must be served in a congregate setting. If an eligible meal recipient is determined to need an additional meal to address his nutritional risk and the meal meets all Title III C requirements, it is an eligible meal and would be included in the State's count for NSIP purposes. Local funding is a part of the match to the Title III dollar and is, therefore, an acceptable funding source.

27. When is a waiver of the 5-day a week requirement needed?

- A waiver from the SUA is necessary if a provider is serving a rural area and is unable to provide meals 5 or more days a week. The waiver must explain what factors are barriers to supplying meals daily, such as, lack of transportation, or personnel or financial. (Part C Subpart 1 Section 331(1).
- A waiver is not needed when meals are served on different days within one program. That is, for instance, if a city is the provider with 3 sites; as long as there are congregate meal services on any one of the sites for 5 or more days/week, then the 5-day/week requirement is met.
- A provider may provide a total of 5 meals in 2-3 deliveries. The service provider, however, must justify to the AAA why there is a need to deliver meals on fewer days than 5 by describing what types of meals will be served, how they will be delivered, and whether adequate storage and preparation service is available to the older client.
- Home-delivered meals may be delivered frozen for more than one day as long as there is adequate storage and preparation service is available to the older client and the client is capable of heating the meal appropriately.

28. What about holidays? May nutrition sites close for major holidays and still meet the 5-day a week rule?

- Providers may choose to close on defined holidays. This information should be included in their contract with the SUA /AAA. Most labor laws do allow for employees to have certain days off and since clients choose not to come on holidays, providers may choose to close for those pre-determined days. The state agency can provide broad policy instructions that describe when it is acceptable to close for a holiday and whether alternate arrangements should be made based on an assessment of the provider's request to close for those days and the needs of the clients.
- For home-delivered meals, some kind of alternate arrangement may be made for a holiday to avoid an interruption of service to the homebound.

29. How many cans of a liquid supplement can be counted as a meal?

- Liquid Supplements served in addition to a meal are not considered separate meals no matter how many cans are provided. A supplemental food given in an amount that equals 1/3rd DRI will not be considered a meal unless it is the only food provided and consumed as a meal. A supplement adds on to a meal, it does not serve as a meal. No matter how much a meal provides, adding supplements to that meal will only increase the nutritional value of that single meal.
- A medical doctor's order is required for those clients that are unable to consume other than liquid food. The order must require that a Registered Dietitian (preferably) review the client's intake of the supplement, their toleration of the supplement, and their need to continue consuming just liquid. The goal is always to have clients eating a mixture of solids and liquids in a meal to maintain muscle mass and overall body functioning.

30. If an eligible client meets the criteria for a home-delivered meal is not "at home", can they still have the meal delivered?

No, it is not a good practice to leave meals at a house unattended or with a neighbor where there is no assurance that sanitation standards can be met and maintained.

31. Can the client's meal be delivered to her child's workplace which is not the client's, "place of residence" as described in NAPIS?

No, home-delivered meals are to be delivered to a client's home because they are homebound. This client does not appear to be homebound if she accompanies a daughter to work. Other arrangements should be made for the parent.